

U.S. v. Gilman

347 U.S. 507, 98 L. Ed. 899, 78 S.Ct. 695 (1954).

A third party complaint by U.S. against Gilman seeking to recover indemnity from Gilman for damages which the U.S. might have to pay to one Thannett who was suing the U.S. under FT CTA (60 Stat. 842, 28 USC 1346 (1952)) for damages done him by Gilman when latter hit Thannett in course of suing & gov't was in official business.

Theory of U.S. suit was that it had implied right of indemnity against employee - implied from C.C. Theory of an employer's right of indemnity even against his employee.

Reasons:

1. Indemnification demanded would, or could, be burdensome, merely so, to employee - b.c. from standpoint of job standing and money.
2. question of federal fiscal policy raised:
3. p. 516:

"Here a complex of relations between federal agencies and their staffs is involved. Moreover, the claim now asserted, through the protest of a law Congress passed, is a matter in which Congress has not taken a position. It presents question of policy in which Congress has not spoken. The selection of that policy which is most advantageous to the whole

involves a host of considerations that must be weighed and appraised. That function is more appropriately for those who write the laws, rather than for those who interpret them."

In the footnote of the Court's opinion (p. 903 of L. Ed.), certain excerpts are taken from the hearings before the House Committee on the Judiciary in the House bills which eventually became the FTCA. (Hearings Before the House Committee on the Judiciary in HR 5373 and HR 6463, 78th Cong., 2d Sess., p. 9-10). These are worth quoting:-

"The Chairman. What is the arrangement when the government has an employee who is guilty of gross negligence and injury results? Is there any responsibility that the employee should in any way be put to the Government if it has to pay for the injury, in the event of gross negligence?"

"Mr. Sted (Solicitor General of U.S.): Not if he is a Government employee. Under these circumstances, the remedy is to sue the employee."

"Mr. McLaughlin (Member). No right of subrogation is set up?"

"Mr. Sted. Not against the employee."

332 U.S. 508, 91 L. Ed. 2067 (1947).

It said by the U.S. to recover for the cost of hospitalizing and paying me of the soldiers who was hit and injured by a truck driven by an employee of the defendant.

Theory of U.S. suit was that U.S. was entitled to damages for impairment of Government-soldier relationship by analogy to C.C. entitlements for damages to husband-wife relationship, parent-child relationship, master-servant relationship, -tc.

Revised: (p. 314):

"For grounded though the argument is in analogies drawn from that field, the issue comes down in final essence to a question of federal fiscal policy, coupled with ~~unquestioning~~ ^{unquestioning} ~~conceding~~ ^{conceding} the need for and the appropriateness of means to be used in executing the policy sought to be established. Whatever the merits of the policy, its conversion into law is a proper subject for congressional action, not for any executive power of ours. Congress, not this Court or the other federal courts, is the custodian of the national purse. By the same token, it is the primary and most often the exclusive arbiter of federal fiscal affairs."

Jackson Surrendered, arguing that the C-6 analogy
was sound, and pointing out that, in a 1235-
case in England, the English govt was ^{held} entitled
to recover in an almost exactly similar case
Atty. - Gen. v. Valle-Torres, 2 KB Em. 209 (1935).